

**Before the
Federal Communications Commission**

In the Matter of)	
)	
Restoring Internet Freedom)	WC Docket No. 17-108
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Reply Comments of CREDO Mobile

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Executive Summary

CREDO is a unique telecommunications company melding social activism with mobile phone and internet service that connects our customers not just to entertainment, but also to sources of information and avenues for civic participation.

Since 1985, CREDO has donated more than \$84 million to progressive groups, including Planned Parenthood, the the American Civil Liberties Union (“ACLU”), Americans for Tax Fairness, Detention Watch Network, Rainforest Action Network, Center for Media and Democracy, Friends of the Earth, Free Press, Doctors Without Borders and many more.

We support an open internet and rely on it for the success of our business. In fact, we would not exist without an open internet, as our customers turn to us to both access the internet services of their choice and engage in democratic debate and political expression.

The internet was built with openness at its core, which allowed both it and our services to thrive. After a series of weakly grounded open internet guidelines and regulations were overturned by the courts, the Federal Communications Commission (“FCC” or “the Commission”) wisely put bright-line rules into place establishing certainty in the broadband market in 2015. Despite assertions to the contrary, we’ve seen no signs of slowdown in network investment or consumer demand for mobile broadband services. If we had, we would have reduced our marketing budget to win new customers, which we have not done.

The FCC’s mandate, however, is about more than just adopting policies that spur economic growth. The FCC also has the responsibility to manage the nation’s spectrum and telecommunications infrastructure in a manner that serves the public interest. The FCC has a responsibility to pursue policies that allow and encourage citizens to engage in democratic

discourse about the issues vital to them, that help citizens organize politically, and that create an open and decentralized realm – open to all – for social, cultural and political interactions.

Without the bright-line rules that are only available under Title II, the world's most vibrant public sphere would be subject to the whims and predatory business decisions of a few large corporations that control how the vast majority of Americans get online. CREDO Mobile customers and CREDO Action members rely on the open internet to participate: In the first quarter of 2017 alone, CREDO members made over 400,000 phone calls to Congress, generated more than 14 million petition signatures, shared CREDO's Facebook posts more than 3 million times and left 1.25 million comments on our Facebook page alone. Dozens of CREDO members also recently created short video testimonials telling the FCC why net neutrality matters to them.

As a mobile virtual network operator ("MVNO"), CREDO does not control network infrastructure and cannot guarantee net neutrality protections needed by our customers without industry-wide regulation. The Commission's proposal to rollback the 2015 Open Internet Order would hurt our business and stifle investment and employment. More importantly, removing the brightline protections created under Title II would endanger our nation's political processes, giving broadband companies undue influence over the selection of political winners and losers.

We oppose this. We urge the FCC to maintain the 2015 rules that require network management transparency, while banning blocking, unreasonable discrimination, paid prioritization and discriminatory exemptions to bandwidth caps. We believe these rules should continue to apply both to fixed and mobile access and to last-mile interconnection disputes.

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I. What We Do: Our Business and Our Impact

CREDO Mobile is a mobile virtual network operator (MVNO) that provides mobile broadband service to Americans who want to align their spending with their progressive values. We offer our members a powerful alternative to doing business with corporations whose conduct is antithetical to the political, environmental and social values we share. Each month CREDO donates more than \$150,000 to progressive causes, reflecting our customers' wishes to support groups engaged in social, legal and political change. Since our company's founding in 1985, we have donated more than \$84 million to progressive groups, including the ACLU, Americans for Tax Fairness, Detention Watch Network, Rainforest Action Network, Center for Media and Democracy, Friends of the Earth, Free Press, Demos, the Electronic Frontier Foundation, Demand Progress Action, UltraViolet, Win Without War, the National LGBTQ Task Force Action Fund, InsideClimate News and Médecins Sans Frontières/Doctors Without Borders.

As you might expect, our customers are extremely active online: educating themselves, engaging in online debates, organizing politically, and expressing themselves directly to local, state, and federal agencies and politicians. CREDO also has an activist community that is more than five million members strong. These members have delivered tens of millions of petitions signatures, emails and calls to elected officials and other key decision makers as part of CREDO campaigns. Understanding that people have busy lives, we build online tools to make activism easy, so any CREDO activist can be highly effective in making their voice heard in fights for equality and social justice. In the first quarter of 2017 alone, CREDO Action members placed over 400,000 phone calls to Congress and helped gather more than 14 million petition signatures. Our customers are a key part of this community. Approximately, 60 percent of CREDO Mobile customers are also CREDO Action members. And over 70 percent of CREDO Mobile customers have voted in our monthly donation process.

All of this is possible only because we are able to offer our customers open internet access, with no toll roads for data-intensive services, no banning of websites on political or competition-based grounds, and the ability for our members to freely use the apps and services of their choice. As an MVNO, CREDO depends on other mobile network operators for internet service, so without strong and enforceable Title II regulations for the entire industry, we could not ensure that these guarantees, critical for our members and therefore our business model, will stand in the future.

II. Title II Has Had No Harmful Impact on Our Business Since Its Implementation in 2015

The FCC's Notice of Proposed Rulemaking ("NPRM") relies heavily on the proposition that large broadband Internet Service Providers ("ISP") have reduced their capital expenditures in building out network capacity in response to the 2015 order enacting net neutrality rules under the FCC's Title II authority. The NPRM references studies from US Telecom and from economist Hal Singer, which purported to find that broadband investment fell after the 2015 order.¹

As an MVNO, CREDO leases access to wireless network infrastructure rather than owning our own. Nonetheless, our business model relies on affordable access to network infrastructure and we closely follow industry trends. We do not find the Commission's arguments compelling, and they do not comport with our experience. As demonstrated in studies from Free Press² and the Internet Association³, overall investment in fixed and wired broadband has

¹ NOTICE OF PROPOSED RULEMAKING* In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, FCC 17-60, https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A1_Rcd.pdf Pps. 15, 16.

² It's Working: How the Internet Access and Online Video Markets Are Thriving in the Title II Era, S. Derek Turner, Free Press. P.6. <https://www.freepress.net/sites/default/files/resources/internet-access-and-online-video-markets-are-thriving-in-title-ii-era.pdf>

³ Preliminary Net Neutrality Investment Findings, Internet Association, April 2017, <https://netneutrality.internetassociation.org/facts/>

actually gone up as demand continues to rise for both broadband subscriptions and broadband-dependent internet services like Spotify, Netflix, Snapchat, Amazon, Facebook and thousands more.

Consumer demand for wireless services and the growth of the wireless market continues, even as the U.S. market approaches what appears to be a saturation point. Online services, especially data-intensive ones like Over-The-Top video services (those transmitted via the internet as a standalone product) like YouTube, Netflix, Amazon and dozens of additional new entrants such as Turner Classic Movie's Filmstruck, keep growing as consumers increasingly turn to video on the internet and move more of their communications and entertainment to the internet.

The five publicly traded wireless companies have seen revenue growth of 4.6 percent since the 2015 open internet vote.⁴ No publicly traded broadband company, fixed or wireless, has told investors or the SEC that Title II impeded their capital expenditures. In fact, research from Free Press has shown that all five publicly traded wireless companies have told Wall Street that their margins are healthy, they continue to invest in their networks and they are growing.⁵

During this same period, CREDO has continued to aggressively spend marketing dollars to win new customers, a sign of a healthy market. To put it more succinctly, Title II has not been a burden in acquiring customers. If there had actually been a significant change in the investment climate, that would have been reflected with weakening demand – which is not what CREDO has experienced.

⁴ It's Working: How the Internet Access and Online Video Markets Are Thriving in the Title II Era, S. Derek Turner, Free Press. May 2017. P.6.
<https://www.freepress.net/sites/default/files/resources/internet-access-and-online-video-markets-are-thriving-in-title-ii-era.pdf>

⁵ Ibid.

We anticipate being able to continue to spend marketing dollars to grow our subscriber base – as long as open internet rules remain in place, guaranteeing to our customers that they will be able to use the internet services of their choice.

III. The FCC's Proposed Rules Would Undermine Democratic Processes and Could Disrupt Our Company's Future

CREDO is more than a mobile wireless service provider. We are a social justice organization that helps our members participate in the democratic process. Our customers choose CREDO because of our progressive values, reflected in our charitable giving and CREDO Action advocacy campaigns. By threatening the internet's potential as a platform for democratic engagement, the FCC's proposed rules also threaten CREDO's business model and our future.

The United States has a proud and vital tradition of individuals using their free speech rights to win over others to their cause, join together and make social change.

As Alexis de Toqueville wrote in Democracy in America in 1840,

“As soon as several of the inhabitants of the United States have taken up an opinion or a feeling which they wish to promote in the world, they look out for mutual assistance; and as soon as they have found one another out, they combine. From that moment they are no longer isolated men, but a power seen from afar, whose actions serve for an example and whose language is listened to. [...] Nothing, in my opinion, is more deserving of our attention than the intellectual and moral associations of America. [...] In democratic countries the science of association is the mother of science; the progress of all the rest depends upon the progress it has made.”⁶

A free and open internet accelerates that progress, and we are proud of our role in helping our customers and members join together to become that power seen and listened to across the country.

⁶ Tocqueville, Alexis , Harvey C. Mansfield, and Delba Winthrop. *Democracy in America*. Chicago: University of Chicago Press, 2000. Print. p. 492.

The open internet rules of 2015 are vital to that effort. They improve democratic discourse by ensuring that more voices can be heard. The rules facilitate political organization and action, making it possible for internet users to engage in the political process without fear that their politics will offend the network owner. The rules furthermore create a decentralized environment beyond network owners control for vital social, cultural and political interactions.

CREDO Action helps make that kind of collective action easier. Our more than 5 million CREDO Action members call their elected representatives, sign petitions calling for change, and participate in person, including bringing protests and demonstrations directly to local offices of their elected officials.

CREDO's social media community is highly engaged and extremely active. In the first quarter of 2017 alone, CREDO's Facebook page generated 65 million video views, 10 million reactions, 3 million shares and 1.25 million comments. CREDO has also organized and helped recruit for hundreds of on-the-ground protests, marches and rallies already this year, including the nationwide tax marches, protests at airports against Trump's Muslim ban, the April 29 People's Climate Marches, the Native Nations March and countless petition delivery events.

This is one of CREDO's greatest strengths as a company. We provide a platform for busy but concerned citizens to participate in democratic self-government. That platform is only possible with strong, enforceable net neutrality rules.

Removing those rules, which are now on firm legal ground under Title II, would allow businesses to be gatekeepers – with the legal means and the business motives – to destroy our members ability to widely share their speech. That change would impact us immensely as a business and strike at the heart of our mission.

IV. Our Customers and Activists Have Historically Justified Concerns that the Proposed Rules Would Impact Their Participation in Democratic Processes

Our customers and member activists fear that the removal of bright-line net neutrality rules will impede their ability to use the sites and applications of their choosing, impede their ability to make their voices heard and to organize, and economically harm small, non-commercial sites and apps that disseminate information and help citizens make themselves heard.

These are real threats. In Europe, where ISPs were allowed to block services, ISPs prevented users from using communication apps like Skype and WhatsApp as ways to protect their telephony and SMS businesses.⁷ Not only does this kind of gatekeeping limit consumer choice, it also threatens to impact user privacy. Newer applications such as WhatsApp and Signal offer encrypted communications valued by many people concerned about the erosion of civil liberties. When industry profits supercede all other considerations, Americans lose both as consumers and public citizens.

Even in the United States, which has had limited protections for big broadband dating to FCC Chairman Michael Powell's Four Internet Freedoms⁸, ISPs have continually attempted to thwart open internet principles. ISPs have blocked competing applications (e.g., Madison River, AT&T Wireless/Skype for the iPhone, AT&T Wireless/Slingbox, Google Wallet), hijacked search queries to earn referral fees, injected their own advertising into unaffiliated websites to earn advertising fees, and interfered with peer-to-peer file-sharing applications and prohibited the use

⁷ Body of European Regulators for Electronic Communications (BEREC) findings on traffic management practices in Europe, May 29, 2012
http://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/45-berec-findings-on-traffic-management-pra_0.pdf

⁸ Policy Statement, FCC 05-151, August 5, 2005.
https://apps.fcc.gov/edocs_public/attachmatch/FCC-05-151A1.pdf

of certain applications unless users paid extra fees (e.g., Verizon/tethering applications, Apple/Facetime).⁹

More recently, Verizon, AT&T and Comcast have exempted their video offerings from usage caps on subscribers, giving their video services an unfair advantage versus over-the-top competitors like Netflix and YouTube. Before the current Commission's decision not to enforce its Title II authority, the Commission was reviewing this practice as a violation of the open internet rules.¹⁰

We have also seen blocking on purely political grounds. In 2007, prior to the Title II classification, Verizon blocked its subscribers from receiving messages from NARAL Pro-Choice America, the abortion rights group, saying that it had the right to block any messages that "may be seen as controversial or unsavory to any of our users."¹¹ In Canada, the ISP Telus blocked a union website that was running an activist campaign against the ISP.¹²

⁹ See Madison River LLC and Affiliated Companies, File No. EB-05-IH-0110, Order, 20 FCC Rcd 4295 (Enf. Bur. 2005).

Singel, R. (2010, October) AT&T Relents, Opens Iphone To Skype, Voip. Retrieved from <https://www.wired.com/2009/10/iphone-att-skype/>.

Curtis, A. (2009, May) AT&T Blocks SlingPlayer over its 3G network, still permits its own video services. Retrieved from

<https://www.publicknowledge.org/news-blog/blogs/att-blocks-slingplayer-over-its-3g-network-st>

Sterling, G. (2010, December) Verizon Blocks Google Wallet, AT&T Likely To Do The Same. Retrieved from <http://searchengineland.com/verizon-blocks-google-wallet-att-likely-to-do-the-same-103759>

Giles, J. (2011, August). US internet providers hijacking users' search queries. Retrieved from <https://www.newscientist.com/article/dn20768-us-internet-providers-hijacking-users-search-queries/>

Von Lohmann, F. (2008, August) FCC Rules Against Comcast for BitTorrent Blocking. Retrieved from <https://www.eff.org/deeplinks/2008/08/fcc-rules-against-comcast-bit-torrent-blocking>

Heath, A. (2013, January) AT&T Gives FaceTime Over Cellular Back To Everyone Except Those With Grandfathered Unlimited Data. Retrieved from

<https://www.cultofmac.com/210634/att-gives-facetime-over-cellular-back-to-everyone-except-those-with-grandfathered-unlimited-data/>

FCC Release. (2012, July). Verizon Wireless To Pay \$1.25 Million To Settle Investigation Into Blocking of Consumers' Access To Certain Mobile Broadband Applications. Retrieved from <https://www.fcc.gov/document/verizon-wireless-pay-125-million-settle-investigation>

¹⁰ Reardon, M. (2017, February) AT&T, Verizon catch a break under Trump FCC. Retrieved via <https://www.cnet.com/news/trumps-fcc-net-neutrality-at-t-and-verizon-zero-rating-inquiry-pai/>

¹¹ Liptak, A. (2007, September). Verizon Blocks Messages of Abortion Rights Group. Retrieved via <http://www.nytimes.com/2007/09/27/us/27verizon.html>

¹² CBC News (2005, July). Telus cuts subscriber access to pro-union website. Retrieved via <http://www.cbc.ca/news/canada/telus-cuts-subscriber-access-to-pro-union-website-1.531166>

CREDO and our activist members continually rely on and even create new experiments in online activism. Just as with startups aiming to become internet giants, non-profit activism projects and socially focussed for-profit companies rely on the open internet.

We and our activist members have every reason to believe that the large cable and phone companies would implement pay-to-play arrangements without Title II protections in place. This has been obvious since at least late 2005 and early 2006, when executives at AT&T and Verizon declared an intention to charge web companies such as Google and Yahoo additional tolls to reliably reach users.¹³

Based on this history, we fully expect that in the absence of strong regulations that ensure a level playing field, companies will continue to leverage their control over wireless infrastructure. A wireless market shaped by pay-to-play behavior would disproportionately harm our – and our activist members’ – efforts to enact social change using our democratic rights and the most powerful communication platform ever invented.

The ACLU and its local affiliates, for instance, have created 19 different apps that allow users to record police interactions with civilians and upload their videos as potential evidence in cases of potential police misconduct. Without Title II net neutrality, the ACLU could well be forced to negotiate with every ISP to make sure it’s in the fast lane and users can upload with the same speeds offered to YouTube or other sites. Nor should users be limited by their mobile provider’s favored services when sharing their own content.

At CREDO, we are experimenting with new video tools to increase citizen participation. For instance, we’re working with Countable.us, a service that lets citizens create and send video

¹³ Mohammed, A. (2006, February) Verizon Executive Calls for End to Google's 'Free Lunch'. Retrieved from <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/06/AR2006020601624.html>
Ante, S. (2005, November) Rewired And Ready For Combat Retrieved from <https://web.archive.org/web/20170203000619/https://www.bloomberg.com/news/articles/2005-11-06/rewired-and-ready-for-combat>

messages to their elected representatives – without any cost to them. Like with the ACLU's CopWatch app, Countable.us relies on an open internet so that users can upload videos without delay and lawmakers and press can easily view the videos. Legislators aren't going to wait for a video to load on their phone, and Countable.us should not be required to pay for a fast lane to compete with the speed of videos from broadband companies' own video services.

The FCC's mandate to govern the nation's telecommunications infrastructure and spectrum in the public interest includes not only economic issues, but also the public's interest in a media system that permits a functioning democracy.¹⁴ The larger broadband players are increasingly creating or buying news and entertainment sites and services that compete with other internet services. This creates incentives for the broadband companies to create toll roads that slow down competition. Those toll roads cause a bifurcation in the internet: Well-funded news/video sites that can afford the toll would gain market advantage over smaller and niche sites, which would be unable to compete – even if they aren't outright blocked. This would have the effect of diminishing the breadth and range of news, viewpoints and discourse on the internet, contrary to the public interest mandate of the FCC.¹⁵

Without a rule banning blocking, ISPs have both the ability and incentive to block certain applications or to discriminate against them. This lets them increase profits while reducing investment in the network and to block unwanted content on political grounds. The results from Europe are clear: blocking is not a theoretical concern.

Moving from bright-line rules set by the FCC under Title II to post-facto enforcement by the FTC is entirely insufficient to guarantee that big broadband providers won't violate open

¹⁴ Telecommunications Act of 1996, Sec. 257.(b). “(b) NATIONAL POLICY- In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.” Retrieved from <https://www.fcc.gov/general/telecommunications-act-1996>

¹⁵ Ibid.

internet policies or provide sufficient and timely redress. Without bright line rules that include transparency requirements, broadband providers could block or degrade internet traffic with no notice to consumers or the service in question, as Comcast did when it secretly began disconnecting BitTorrent connections and denied it was doing so.¹⁶

Activists and citizens should be able to rely on rules that prevent violations of open internet principles before they happen. And they need to be able to turn for redress to an agency that has both subject matter competency and authority to move quickly to enforce those rules. None of that is possible under a regime where complaints have to be raised after the fact, and the rules will be made on a case-by-case basis by the FTC, possibly years after a violation initially occurred.

VI. Conclusion

The open internet is not just about business. The open internet rules, as established under Title II in the 2015 order, allows CREDO, our customers and our more than 5 million activist members to participate actively and imaginatively in the public sphere made possible by an open internet, free of gatekeepers.

From its earliest days, the internet was governed by these principles and from those, new avenues for democratic discourse and participation have been paved.

Tens of millions of Americans now regularly use the internet to more fully participate and shape the American project and to effect social change, in ways and numbers that were unthinkable just 20 years ago.

¹⁶ McCullagh, D. (2007, October) Comcast really does block BitTorrent traffic after all. Retrieved from <https://www.cnet.com/news/comcast-really-does-block-bittorrent-traffic-after-all/>

The FCC's proposed reversal of Title II classification would close those avenues and silence those voices, and we therefore oppose it. Instead we urge the FCC instead to keep, reinforce and enforce the Title II brightline open internet rules that require network transparency while prohibit blocking and throttling, and pay-to-play arrangements.

Respectfully submitted,

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